IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 8596 of 2007(W)

AGAINST THE ORDER DATED 01/02/2007 IN IA.2927/2006 IN OS.44/2005 of PRL.SUB COURT,IRINJALAKUDA

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PETITIONER:

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1. ABDUL GAFOOR, AGED 41 YEARS,
   S/O. CHAKKALAKKAL ABOOBACKER, PULLOOTT DESOM,
   PULLOOTT VILLAGE, KODUNGALLOOR TALUK.

2. SUMIMOL, W/O. ABDUL GAFOOR,
   AGED 35 YEARS, PULLOOTT DESOM, PULLOOTT VILLAGE,
   KODUNGALLOOR TALUK.

BY ADV. SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENTS:

K.T.VARGHESE, AGED 52 YEARS,
S/O. KALATHIL THOMAS, PARAVUTHARA MURI,
PARAVOOR VILLAGE, PARAVOOR TALUK.

BY ADV. SRI.BECHU KURIAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE DECREE DT. 31.1.2006 IN O.S. NO:44 /2005 ON THE FILE OF THE ADDL. SUB COURT, IRINJALAKUDA

EXT.P2: -DO- OF THE E.P. NO: 213 OF 2006

EXT.P3: -DO- OF THE OBJECTION IN E.P.NO: 213 OF 2006

EXT.P4: -DO- OF THE I.A. NO: 2926 WITH AFFIDAVIT

EXT.P5: -DO- OF THE COUNTER IN I.A. NO: 2926 OF 2006

EXT.P6: -DO- OF THE PETITION WITH AFFIDAVIT IN I.A. NO: 2927 OF 2006

EXT.P7: -DO- OF THE COUNTER IN I.A. 2927 OF 2006

EXT.P8: -DO- OF THE ORDER DT. 1.2.2007 IN I.A. NO: 2927 OF 2006

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C).No. 8596 OF 2007 W

Dated this the 16th August, 2007.

JUDGMENT

This writ petition is filed challenging the one line order in I.A.2927/06 in O.S.44/05. The plaintiff was given a decree for specific performance and he was directed to deposit the amount before 31.3.2006. It is averred in the petition that he got the decree only in April 2006 and requested the defendant to clear the encumbrance, take measurement of the property etc. and thereafter file an application to that effect before the executing court. He was advised that amount has to be deposited and therefore he has deposited the amount with delay. The other side would contend that it is only a deliberate attempt and he has not complied with the terms of the decree and therefore time cannot be extended. It is very clear from the conduct of the plaintiff that he has taken steps to get the implementation of the decree in a rightful manner and it is true that there is some laches on his part in depositing the amount. The time lapse is not that much, which must make the court not to use its discretion in granting extension of time. Therefore the order passed by the court below is confirmed. But before final disposal of the matter the court should consider that for the delay in

depositing the amount whether the plaintiff has to pay interest to the other side which the other side would have been entitled in law. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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